

## **BOARD OF ZONING APPEALS**

### **Minutes**

**February 26, 2002**

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas, was held at 1:30 p.m., on February 26, 2002, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following Board members were in attendance: BICKLEY FOSTER, JAMES RUANE, JAMES SKELTON, JOHN ROGERS, RANDY PHILLIPS, present. The following Board members were absent: BRADLEY TIDEMANN, FLOYD PITTS.

SHARON DICKGRAFE, Law Department present

The following Planning Department staff members were present:  
DALE MILLER, Secretary, SCOTT KNEBEL Assistant Secretary,  
ROSE SIMMERING, Recording Secretary.

Absent: J. R. COX – Commercial Plan Review/Commercial Zoning -- Office of Central Inspection.

**RUANE:** Calls BZA meeting to order. We have an Agenda that has already been published and some advanced materials that are available to all of you, if you haven't already picked them up, that are there on those tables. I ask that if you address us that you come up to the microphone give us your name and address for the record that is being made today, and in case we don't quite catch on, make it clear to us whether you are in "favor of" or "against" the particular proposition or question that we are entertaining.

The first Item on the Agenda is approval of the "Minutes" for our meeting of the month of January. They were submitted earlier in your packet. Does anybody have any questions, comments, corrections, and clarifications?

**SKELTON moved ROGERS seconded to approve the "Minutes" of January 22, 2002.**

**MOTION carried 5-0.**

**RUANE:** Moving then to Item #2, review and approve 2001 BZA Annual Report. This again was in your packet. It is a report to the City Council with regard to our activities results, attendance and overall functioning of this Board over the past year and it bears the date of February 26, 2002. Is there any input that the Board would like to have with regard to this report?

**FOSTER:** I don't think that it needs to be done in a form of a question, but didn't we used to list how much income the BZA had and approximately what it cost? Is that criteria for the annual report?

**KNEBEL:** We used to include that. The City Manager's office recently changed the format and the information that they requested, and it didn't ask for that, so we didn't provide it.

**FOSTER:** Good, save a little time.

**KNEBEL:** They will probably realize they forgot and ask us to submit it later.

**FOSTER:** Probably see it next year.

**RUANE:** We will wait to address that if and when they ask. Anything else on this report? Have you had the chance to look over it?

**FOSTER moved PHILLIPS seconded to approve the BZA 2001 Annual Report and sent to the City Manager.**

**MOTION carried 5-0.**

**RUANE:** That then takes us to Item #3 on our Agenda, BZA2002-00006. It is a variance request to allow a second sign for Central Christian Church along arterial street frontage and to allow a sign for the church to have a red L.E.D. reader board on property zoned "SF-5" Single-Family Residential. First we will hear a presentation from City staff, and the applicant has been furnished with the staff report and recommendation, yes?

**AUDIENCE:** Yes.

**SCOTT KNEBEL, BZA Assistant Secretary:** As was mentioned, this is a request for a variance for a second sign for Central Christian Church, which is located at the southeast corner of 29<sup>th</sup> Street North and Rock Road as shown here on this slide. The white part of this map indicates that the property is zoned for Single-Family Residential use, which does permit churches but also has very restrictive requirements on signage. Essentially, it permits one 48 square foot sign per arterial street frontage and actually even less signage than that if you are on a street other than an arterial. Currently, the Church has a sign and it is located here, which basically is a static sign that says Central Christian Church on it. Churches are allowed, when they have special events, to temporarily bring in temporary signage: signage on wheels with the plastic lettering to announce their special events.

The church feels like that is pretty unattractive and inconvenient for them and have pitched this proposal to install a message board. Essentially, it doesn't show up very well here in the picture, but this would be a 44 square foot sign that had a digital L.E.D. read out that you could change, and it would put those messages on there that they are displaying on the temporary signage now. That sign there would require actually two variances. It would require one variance to allow a second sign on that street frontage, and then it would also require a variance based on the method of lighting. The Sign Code says that when you are in the single-family district that signs can be lit by what they call

indirect white light, which is a fancy way of saying shining a white light on the sign rather than having it backlit, so those are the two variances that are requested.

As far as meeting the conditions necessary for granting the variance, staff has reviewed these and we feel like they do meet all five conditions, and I will go through them quickly. I can show you the location as well, and it would probably be helpful to you. This is the church over here on the right hand side of the picture, and this is the Walmart building. The sign would be located in this area here, basically within an area that is heavily landscaped with grass and trees near the corner of the intersection. This is what the intersection looks like. As you can see it is very heavily trafficked and commercialized with numerous signs, with both building and pole signs in this location. Also back down south along Rock Road there is a very large commercial sign in this location, and then this is the signage that the church has today, and you can see that it is very low and very small in scale compared to the rest of the signage.

We find that the property is unique based on the property size and the fact that it is located at the intersection of two arterials, and the fact that it has very long street frontage. All three of those factors are unusual for even church properties, even large churches in the community.

The adjacent property we feel like will not be adversely affected. Most of the adjacent property owners are commercial properties. Those that are residential properties will be separated by this, and there will be significant buffers in the forms of surrounding buildings and trees, as well as distance.

As far as the hardship to the applicant, were they to continue to utilize the method that they do today, that hinders their ability to provide this information, and really limits the amount of information that they can provide to the public to utilize such a large facility, that is open to the public.

That kind of leads into the public interest. We feel like that this signage is small in scale and has minimal lighting and is really more tasteful in design than using the temporary signage that they have now. I was by there, I think last weekend, and I think they had two temporary signs out there. I don't know if anybody else had a chance to go by, but it is really much more in the public interest than the method that they are using to convey the message today.

As far as the spirit and intent, essentially the regulations that are in the Sign Code really didn't envision large churches of this size on 30-acre lots that are located at the intersection of two arterial streets, with over a quarter of a mile street frontage. Really the intent of the Sign Code is for the smaller churches, that were more common when the Zoning Code was prepared and the Sign Code was prepared, that are located within residential neighborhoods, and are right across the street or right next door to single family residences, and so you would need to limit the amount of lighting and so forth and the square footage and the number of signs in those instances.

Staff is recommending that the two variances be granted, and we have listed a number of conditions. The first one is that the sign be placed in the same location as shown on the approved site plan. We have not really tied it down. There is not really any specific dimensions, so we said generally, but essentially what we are looking for is signage that is in this location here. If the Board thinks that we need to get more specific about it, we could do that and have the applicant provide the exact distance and have that approved by the Secretary, would probably be the best way to do it.

We are limiting the sign to size and height that is proposed and to the lighting method that is proposed. We are putting in here a statement about that there is no flashing or moving images, and that is actually prohibited by the Sign Code, but since this is a variance we thought that it would be best to specifically state that it is still prohibited and clarify, and this is an interpretation that has been made by the Zoning Administrator, that means that the sign shall not change messages more than once every ten seconds.

The fourth condition would limit the use of portable signage, so that this signage that is proposed would be a replacement for that, and then the standard conditions of requiring a permit and construction within one year.

With that I will answer any questions that you might have.

**PHILLIPS:** On Item #4, you said, "limit" where as here you are saying basically "eliminate" the portable signage on Rock Road.

**KNEBEL:** Right, it will not be permitted.

**RUANE:** I understand where the location is, but will the face of the sign be perpendicular to Rock Road?

**KNEBEL:** Yes, it will be perpendicular to Rock Road.

**RUANE:** Any other questions for Scott? Now we will hear from the applicant.

**Dave White, 1300 Sagebrush, speaking on behalf of the applicant:** I would like to begin by thanking the Board to hear and review our request that is here before you. I am a member of the congregation and an elder of the church, who is involved in the leadership of the congregation. But, I also happen to be the architect who did the design for the most recent Worship Center Addition to the property that we are speaking of here today.

I am here representing the church to request that this Board would grant our appeal to install a 44 square foot sign, an electronic message sign on our property located at Rock Road frontage, as Scott has previously defined. I would like to tell you briefly a little bit about Central Christian Church. We are a congregation of approximately 5,000 members, and we have recently built a 3,000 seat worship center on our 27 acres. Three legal entities actually operate out of our property. There is a daycare and preschool.

There is a K-8 academy, and then of course there is the church, and these all operate under the umbrella of Central Christian Church. Our property is located on the south east corner of 29<sup>th</sup> and Rock Road, and it is zoned single-family, while the three adjacent corners of that intersection are zoned light commercial. Our property has 755 feet of frontage along Rock Road and 973 of frontage along 29<sup>th</sup> Street.

Central Christian Church has always been an active part of the Wichita community, with the ministries extending across the country and into the world, literally. With the recent addition of our 3,000-seat auditorium, it is one of our goals to further enhance our function as a community resource. Aside from the obvious Christian function and programs, our 200,000 square foot facility is used for a voting center, for concerts, for state wide conventions, for rotary and civic organizations and neighborhood meetings. Just for example, our facility was recently used by the City of Wichita to call a neighborhood meeting, with the various neighbors and businesses. They were wanting to discuss the proposed widening and modifications to both 29<sup>th</sup> Street and Rock Road. Once again, we look at our facility as a resource to the community in that respect.

Over the past year and a half, since building our new auditorium, we have had several weekend events where the attendance over the course of the weekend has been over 8,000 and 9,000 people. We have a lot of people come through our doors on a very regular basis. We are looking for a way to get the message out. One of the reasons for installing the electronic message center is here again, to aesthetically enhance our property and our image. Our property is not currently a part of a C.U.P., and thus once again, as your staff has pointed out, our method of putting the message out is on the hideous-yellow portable signs. We would love to get rid of them, and that is really one of our large driving forces for this request.

Once again, I just want to take opportunity to thank you for your time and consideration of our application. Again, it is Central Christian's desire to be an active, vital, responsible neighbor and community within the City of Wichita. I may just quickly introduce those who are with me. This is Mark Posson, the Administrative Pastor of the church. This is Michael Bankston and Larry Boggs, and they are both of Trimark signs, and they are the ones who have been working with us on supplying and providing the signage.

One clarification that I might make, on the information in the report it indicated that the sign was a red L.E.D. color sign. Which it has that capability, but it also has the capability to be any color that we want it to be aside from only red. I just wanted to be right up front and clear about that with you. With that myself, or any of us, will be happy to answer any questions that you might have.

**RUANE:** What questions does the Board have for the applicant?

**PHILLIPS:** I think for the record, I would like to be able to hear maybe from the applicant, as far as the five items here. To me four of them are very clear from the standpoint of uniqueness, adjacent property, public interest, and spirit and intent, but

maybe a little better explanation on the hardship. As far as the church's standpoint, if for some reason this weren't approved, what type of hardship would exist?

**WHITE:** We would still get our message out, and it would be via the portable yellow signs. We just got done spending \$12.5 million in building a building. We look to create a nice image on the corner. We think that this signage would increase and enhance that aesthetic image, but we would also, and here again, the primary reason for the sign is that we just have a lot of events that happen at the church. I couldn't even begin to tell you the number of things that go on in there on a weekly basis, but it could easily number in the hundreds. We want an opportunity to take that message to the public, and to our congregation, to anyone who might be driving by frankly. So really this is just a cleaner, more flexible method to get that message out. Can I give you anything any better?

**PHILLIPS:** I can appreciate all that, but I am not sure that really addresses the hardship issue, which is what I was hoping maybe that you could elaborate on. I think that falls into several of the items. But, I think one of our responsibilities here is to make sure that all of these items are addressed, and to me that is the most nebulous one, at this point. I think all of the rest of them, I think I would have to agree wholeheartedly with the staff and the applicant. But, as these decisions are brought before committee. I think it is nice to clear them all up if there is an issue. Again, I don't think that the explanation to me really addressed the hardship.

**RUANE:** We need, in order to grant the request, we need to find that all five of these conditions are met. Perhaps as a vehicle to assist your outreach ministries could be relevant to the hardship issue.

**SKELTON:** I think something relevant to the hardship issue would be the church's necessity to go and acquire temporary portable signs. I think there were some comments made about the inconvenience in having to go do this, and put them up there, and they are really not effective.

**WHITE:** You are absolutely right. They are less than effective, and as we know, half of the time the letters are blown down the street somewhere, and people are picking them up along Rock Road. If I have to define it as a hardship, yes, the portable signs are a hardship, both aesthetically and functionally. Just the fact that we have to go get them, we have to move them in, we have to stake them to the ground. I could call that a hardship.

**RUANE:** Does anyone else for the applicant want to address the hardship issue?

**MARK POSSON, 4921 Farmstead Court:** The hardship issue is the number of events that we are hosting, whether they are our events or hosted events. Trying to convey those to those people who we are trying to get that message out to, so the hardship issue is that we are limited on what we are able to communicate out as far as the events are concerned with our existing signage. As Dave has mentioned, and as mentioned by Scott, we have to go out, and get the temporary signage. To really convey the message, and a perfect

example is the case right now, we have several larger events that are coming up in the next month and a half, and we had to go out and get two signs, one on 29<sup>th</sup> and one on Rock Road. They are not saying the same thing. They are really talking about two different events that are happening in our building. So that would just be another one of the explanations of the hardship that we are dealing with, as far as signage is concerned, and the limitations that we have currently.

**FOSTER:** Was there some reason that the existing sign was not put on the corner to begin with?

**POSSON:** David may be able to give us some more information as far as that goes. I couldn't answer that because the original design took place over 20 years ago, and I think part of it has to do with the architectural centering of the building.

**WHITE:** I will try to answer that. I wasn't around back when the building was originally built. You can see the line right there. What you see in the gray is the latest addition to the building. Basically everything that you see, and stuff that you don't see back in here, was part of the original project that was built over 20 years ago. Back when this project was built it honestly was a wheat field out there, and Rock Road was literally a rock road. The orientation and thinking of this as being a major arterial, and 29<sup>th</sup> as becoming an arterial also, I just don't think that was ever discussed or thought about at the time. The sign as it sits right here, you can see kind of a centerline drawn there, it is the axis of the building, and that sign was located on that building axis, and that, frankly, is about all I know about that issue.

**FOSTER:** Where is the entrance?

**WHITE:** The entrance to the building? There is a main entrance right here.

**FOSTER:** No, I meant from Rock Road.

**WHITE:** The drives are right here, the main entrances.

**FOSTER:** In other words, the entrances are down where you are pointing now?

**WHITE:** Those are main drives into the property.

**FOSTER:** There is one further up, then, from there to 29<sup>th</sup>?

**WHITE:** Nothing from there to the corner, that is correct. It is all access control.

**FOSTER:** Sometimes people put signs near their driveway to identify, and this isn't at the driveway either.

**WHITE:** That is correct.

**FOSTER:** Just in front of the building.

**WHITE:** Correct, we see that as a location that would serve us well, in terms of those from 29<sup>th</sup> and Rock Road visibility.

**RUANE:** Anyone else would like to speak in favor to this application? I will bring the comments, therefore, up to the Board.

**PHILLIPS:** Point of clarification, I thought Mr. Foster's question was well founded there. Typically, when you have large projects like this, and like it was said, when there was nothing but a wheat field out there, you try to get people to the front drive. So you put the signs near that at the time. That's where the front drive was, that is where the majority of the building was, and it sat further back. So I mean, I see why the original sign was placed there. I am very familiar with the development of Rock Road and 29<sup>th</sup> and how it has changed over the years. I think that very few people 20 years ago, 15 years ago, would have guessed that 29<sup>th</sup> would have been as active of an arterial as it is right now, so it is easy to see why the growth has gone that way. If I am not mistaken, we are probably looking at that slide probably 3 to 4 acres of what is a 30 acres site, so there is a considerable amount of ground behind it off the slide right there, which is a little hard to read at times on some of the prints and stuff. So as far as I am concerned, the hardship, I thought was explained, and I am ready to make a motion any time.

**KNEBEL:** The only suggestion that I would make is that in the conditions of approval, where we specifically reference the color red, and since the applicant has indicated that is not the only color that it is capable of displaying in, so it is something that we could just strike the word, "red" and probably leave it at that. It is in Item #2 in the conditions of approval.

**RUANE:** From staff's position is the use of some other color then red a greater concern?

**KNEBEL:** There are probably some colors that are more obnoxious than others. I don't know that is really the intent of the church. I would be surprised if that became a problem.

**FOSTER:** Not near the traffic light on 29<sup>th</sup> Street, so there would be no color on the new sign? Or would there be color on the new one?

**KNEBEL:** The new sign would have color, yes.

**FOSTER:** That could go 16 feet high? Is it anywhere near a traffic signal?

**KNEBEL:** It is not particularly near, no, it is setback

**FOSTER:** Our firm has made a study in recent years about signs on churches, and they seem to be getting bigger all the time. Mainly because people do not walk-by anymore. They drive-by at 30 to 40 mph. There is sometimes a need in a residential zone to have it



larger, and it might even be, if we get too many requests for church signs, that we maybe look at the regulations themselves. Sometime there is kind of a larger demand because of the visibility.

**RUANE:** By that you mean put some specifics in the Sign Code to address church signs?

**FOSTER:** I write Sign Codes, and we write the signs now a little bit larger for churches in the residential area just so we don't have to have these kinds of questions come up. Because of the speed of the vehicle, and people are just not walking by anymore, so it is a different world in that sense. I can see the logic, and as Randy indicated that there is some logic why they never put up there on 29<sup>th</sup> to begin with. I think if they were building this today, I wouldn't agree with two signs. I would put one on the corner, but I think they made a case for that.

**RUANE:** Sounds like we are ready for a motion.

**PHILLIPS moves and ROGERS seconds, that the Board accept the findings of fact as set forth in the secretary's report; and that all five conditions set out in Section 2.12.590 (b) of the City Code as necessary for the granting of a variance have been found to exist and that the variance be granted subject to the conditions set forth in the secretary report. With the exception of the amended Item #2, which would strike the word "red" and that is for both variances for the second bulletin board sign as well as the variance for permitting the additional lighting technique on the sign.**

**RUANE:** Again, to repeat the motion is to approve both variances as set forth in the staff's recommendation, however striking the word "red" from the indication of the color of the L.E.D. indicators.

**MOTION carries 5-0.**

**RUANE:** Item #4, Case number DR2001-00008 BZA Bylaw Amendments. I trust you all received and had time to review the memo and the attached materials regarding the amendments to Rules and Regulations/Bylaws. Who feels ready to start this discussion or make a motion?

**FOSTER:** I have a lot fewer comments than I had last month, and I would like to start that way. Just a few actually, and I think it is going to be very useful to have a new set of Rules. I am almost embarrassed to pick out a few smaller things, but on the second page in the title, I think we need to drop the word Regulations, and I am sure that you didn't intend to leave it in, as well as, on the first line.

On page three, just to clarify this point, if you look at Article II, Letter C, it talks about "any member who abstains from voting as allowed by Subsection E. below, shall be counted as a member for determining if a quorum exists". I agree with the wording

except for one line in Subsection E, it talks about the persons, and I certainly agree “disassociate themselves from the Board”. Now it would imply to me that a person who “disassociates from the Board” is still being counted as a quorum, and we haven’t done that in the past. Is that a new thought? Or is that intended to be that way or not?

**KNEBEL:** It is intended to be that way. I don’t know whether it is a new thought or not.

**FOSTER:** If someone “disassociates themselves”, they really are not sitting up here. You might say, and we have not counted them as a quorum, we went through that last time.

**KNEBEL:** The problem with that Bickley is that if you have four people here or five people here since it takes four to get something granted like you do today.

**BICKLEY:** It would take three now?

**DICKGRAFE:** Under the revised rules you are not going to have the four votes.

**KNEBEL:** It would still have the four votes requirement.

**DICKGRAFE:** No, look at, 7 C, on page 9, an affirmative vote of at least a majority of the Board members appointed and qualified.

**KNEBEL:** Which would be four, if there are seven members appointed and qualified. If you don’t count somebody who abstains as a member of the quorum, then that would allow them, if they have a conflict of interest, to, if there are not sufficient members present, to stop the hearing. Which you know, if they truly have a conflict of interest, maybe that is what they want to do.

**MILLER:** It does two things. Often times we only have four people here, and if someone were to have a conflict, then this allows that person to step down, but still for the purposes of voting, they are still here. The remaining folks can continue with business. They still have a quorum, it is just that there is just three people. Otherwise, as Scott said, if someone were purposely trying to defer or stall a case then, they could step down every time and it would automatically be deferred.

**DICKGRAFE:** But, if you have four and one member steps down, and you only have three to vote. Under 7C you still can’t have any kind of an action. I guess that is the issue. If you have fewer than four under this rule, a tie or fewer than four, assuming that you had all of your positions on the Board filled, with seven would be a denial.

**FOSTER:** I understand if someone abstains by silence that obviously they are counted as part of the quorum, and I don’t have any difference with what has been presented. It is just that I don’t know that we have discussed that concept, and I just want to make sure that everybody is sure that is the way it is being done, but I don’t think that we discussed that approach.

**RUANE:** The way I look at quorum is the quorum is set and established to determine whether or not a valid meeting is held. We establish a number of us who show up and we deem that notice must have been sufficient. There are enough of us here for us as a body eligible to conduct the business that is on that Agenda. Once you have a quorum for a meeting you have got a quorum for the entire meeting, and if somebody abstains from a particular Agenda Item, they can't destroy your quorum for the purposes of holding and finishing that meeting.

**FOSTER:** I think that is a good idea. I am just saying I didn't think that we discussed that to know that was what we were getting, and wanted to make sure everybody understood it that way.

**RUANE:** Trying to understand the inter relationship of Article II, C, states out of our seven members four constitutes a quorum, and the meeting can go on, and then under Article VII, C, an affirmative vote of four shall be necessary to grant and Appeal or a variance?

**FOSTER:** Where does it say four, oh, it says a majority.

**RUANE:** A majority of the Board members appointed and qualified, which would be four out of seven.

**DICKGRAFE:** If there are vacancies then that would leave you with, if there is only 5 people on the Board, which has happened before, and five actually appointed and qualified, then your majority would be three. So you could in that theory pass a variance with only a vote of three, but that is going to depend upon how many are actually appointed and qualified on the Board. If there are vacancies, then that number could shift.

**RUANE:** What usually happens? My guess is the quorum establishes when you have a valid meeting, and that typically a majority of those voting at a valid meeting approve a matter, rather than a specific number of 4 out of 7 or something like that. Is that the general standard?

**DICKGRAFE:** Yes, although in the zoning cases, and I think Bickley addressed this in the first draft of this, is whether or not you wanted this standard to be lowered to a simple majority of those present, or a majority of the Board membership. I think that it was staff's thought, and you can correct me if I am wrong. They were a little uncomfortable with allowing a majority of those present, and thought that given the standards that are applicable in zoning cases, that it was better to leave this super majority but a majority of those people who would be entitled to vote in this particular action. Is that a fair statement?

**KNEBEL:** Our concern is that you have four people here, and one abstains for a conflict of interest, and then two Board members grant a variance.

**DICKGRAFE:** But, under that scenario that variance would be denied?

**KNEBEL:** Unless the applicant requested that it be deferred.

**RUANE:** I don't think you can expect the applicant to recognize the potential for that happening.

**KNEBEL:** Right, and it is going to be incumbent upon the Board and staff to point that out to them.

**PHILLIPS:** Based on a unique set of circumstances, beyond the control of an applicant, that by default it could be denied, when we might have everybody on the Board in favor of it. Just like that last case had. We had four people here, and one of us had been involved in that case where we had to abstain and declare a conflict of interest, by that sheer number, and that sheer accident, that thing would have been denied. I have a problem with that default system there to where it just automatically reverts to a denial. That is the only problem that I have with it. That is my comment on it, and I just think that it is unfair.

**DICKGRAFE:** I think your option is to have it come back, which we have done in the past.

**PHILLIPS:** As long as that verbiage stays in here, and the applicant's are informed of that, and I don't think we can expect him to be savvy enough unless, they are represented by an Attorney who has been here before or somebody has experience. As long as that is made clear, I really don't have a problem with that, because I think it is probably safer to the denial part of it than the approval, because there maybe something that goes the other way. Obviously you had to pick one or the other, and I understand the circumstances that you were in Sharon, but I think that if we are going to leave that in here, I think that it really makes it necessary for either us as a Board or you as staff to clarify that, and make sure that is clear with our applicant, so they understand. Because if for some reason it happens that they have the option, and be aware of the fact that they are probably better off requesting a deferral. Hopefully, that is what will happen. It seems like that is penalizing them to no fault of there own. So hopefully, our system will allow that to be corrected through the process.

**RUANE:** Sharon how do you feel about Article VII, C?

**DICKGRAFE:** That there is no real good way to address this. I think the concern was, and staff's concern is, that we have had cases in the past they we couldn't get four and, I think the Dick's Sporting Good's sign is the prime example, it kept coming back, and coming back, and coming back, coming back. Whether that was fair to the applicants, whether that was fair to staff, whether the right result was reached in that case, who knows. I think it is a matter of how this Board wants to determine how best to deal with

that, whether it needs to come back and you need to have a vote of four to do something or whether you are going to assume that if we didn't get four then it is denied.

**SKELTON:** It would be my favor that the automatic denial just because of a lack of a quorum is unfair to the applicant. I think although it might serve as an inconvenience to have it come back over, and over, and over, it is probably to the applicant's advantage, and that would be more fair. It is not their fault that three of us are here and they are getting penalized for that, when it does occur.

**RUANE:** I think to avoid the appearance of impropriety, you should not have anything that could result in a member of this body by not showing up helping an applicant to get a variance.

**SKELTON:** By not showing up, right.

**DICKGRAFE:** By deferring that, I am not sure that you could allow that. I mean if your're saying that it is going to come back if you don't get four, then I am not sure that you are allowing that, unless that person is going to miss two or three meetings in a row and then be off the Board.

**RUANE:** Part of the reason I asked Sharon, is that I well remember that we cannot have this result where people have to keep coming back, and back, and back.

**DICKGRAFE:** I think that was the goal that I was given a year ago when these started was to get rid of that. But when you start looking at specific scenarios of the number of people on the Board, and number of votes on the Board, and what ultimately could happen, I think we normally have four or five members here.

**SKELTON:** How often is it going to happen?

**DICKGRAFE:** More frequently than you think. With four or five members and saying that if you don't get a vote of four, out of four, it is denied. You are really putting the burden on the applicant to have an absolute majority.

**MILLER:** Just looking at that Dick's Sporting Goods sign, obviously the way that it was working, someone on the Board had to decide that it is more important give the applicant an answer, than it is to vote my conscience. Because we had people who voted consistently a certain way, and they always ended up without getting an answer, and so that then puts the burden on a Board member to say, I am going to compromise my principles on what I really think ought to happen here because we owe this guy an answer. I don't think that is fair to the Board either.

**FOSTER:** I don't think that is unusual to require four votes on a Board of Zoning Appeals. It is not the majority rule that people do, but there are Boards of Zoning Appeals that do that. Particularly in a variance case, because the idea being that a variance is really letting somebody do something that everybody else has to follow the

rules, so it is a kind of a higher standard to allow them to do it, so I have never objected to the concept of having four members do that.

**RUANE:** Applying this as proposed, if only four of us were here today, that would constitute a quorum. In order for that application to be approved four of us would have had to vote in favor of it, so if we only had four here today, then we would have been able to do our business. I don't have any objection to this, and I am glad that it came up for discussion, because I think we all need to understand that there are several options open to us, and we just need to pick one that we think is best.

**PHILLIPS:** I am really in favor of four votes. I like that because that means you are really going to get ...

#### **TAPE CHANGE**

**PHILLIPS:** ...wait 30-days obviously that is little bit of a hardship in some cases but on the other hand a denial is a greater hardship, so as long as we can make, and I think that each of us here have enough conscience with or without staffs input or education, for the applicants that we will hopefully make them aware of it and let them make their choice. Because I think Bickley is right, they are asking for an exception or a variance. Something that is out of the norm. Everybody else follows rules. Let them make the choice when they are here to proceed, or see if they want to withdraw. It is either 30-days or flip the coin on a denial. I don't have a problem as long as we can do that. That was really my issue and my concern.

**FOSTER:** Mr. Chairman do you read this now then, that if a person abstains that they are a part of the quorum? And then too I have to tell you, I don't see where it says four votes, I'm sorry, I just don't see it.

**KNEBEL:** It says at least the majority of the board members appointed to qualify.

**FOSTER:** Where is that?

**KNEBEL:** It is on page 9.

**DICKGRAFE:** 7 C.

**KNEBEL:** And 7-C.

**FOSTER:** I'm sorry I couldn't hear.

**KNEBEL:** It used to say...

**FOSTER:** I'm sorry, I heard several voices and I couldn't hear. All right which one.

**MILLER:** 7-C, Page 9.

**FOSTER:** I didn't see it on that page 7, Oh C, all okay, all right. Is everybody happy with that then? Is that the idea?

**RUANE:** Sure I can live with that, but in response to what I think was your question. If less than four of us are here, I think the Chairman should announce that the meeting cannot convene, we do not have a quorum. Therefore we can take no action. Sorry.

**FOSTER:** Right, right.

**DICKGRAFE:** That is true. That is the only thing you can do.

**RUANE:** And that is all that happens.

**FOSTER:** I don't know how many other people think if this, I have a feeling they do but I remember when I came on that one of the reasons for the four was, it probably, I would hope, that it encourages good attendance. That people would know the seriousness of not having enough people here to make a vote. Maybe it does that. The other thing I had a question on Mr. Chairman is on E, on Article II. It says unless such permission shall have been granted, meaning for the abstention or unless there shall have been a negative vote, a member's silence in voting shall be recorded as an affirmative vote. Now I'm under the impression that a member's silence that it becomes affirmative only if it is a tie vote. I don't, and maybe I just need an explanation on what does that mean. How does that work on a negative vote? I was thinking it had to be a tie vote, and an abstention goes with the majority vote on a tie vote, is my understanding.

**KNEBEL:** Abstention does not count as a vote at all. If you read that sentence, it says unless such permission to abstain shall have been granted. So if that permission to abstain shall be granted, there is not vote counted for that person at all no affirmative vote, no negative vote. The only case in which an affirmative vote is recorded is if they are sitting up here as a voting member, they don't cast a negative vote, and then an affirmative vote is recorded even if they say nothing. Chairman says, all those who favor say aye, and there are five of you here and four of you say aye, and one of you were not paying attention and didn't say anything, that would be a 5-0 vote, is what that addresses.

**FOSTER:** Scott I just am a little dense on this. I'm not trying to be. I really don't understand. Okay, I understand what you are saying as to you are not counting the affirmative. This is a little different, so I have to adjust to that. But you are saying an abstention is not a person that is silent so to speak. You are classifying them differently.

**KNEBEL:** That's right.

**FOSTER:** Okay, that is not the usual way, but I am catching up here. So a person that is silent, now that would be counted in the affirmative, what unless there has been a negative vote count. I'm not sure I understand what that means.

**RUANE:** If that person does not vote no, and they...

**FOSTER:** Or vote at all.

**RUANE:** If they don't vote no and they don't vote yes, it counts as a yes vote.

**FOSTER:** Unless they have declared themselves to be abstained.

**RUANE:** And been allowed to abstained and thereby been pulled out of the process.

**DICKGRAFE:** You have to declare your abstinence, or you are considered part of the voting body. You don't say anything. It is counted affirmative.

**MILLER:** Bickley all it is really doing is clarifying that you have to ask for permission to abstain. If the Chair gives you that permission, then you are not counted as part of the total vote. But let's say you ask for permission to abstain and he did not give you permission to abstain, so instead of voicing a vote one way or the other you sit there in silence. This says you are going to be counted as an affirmative vote.

**DICKGRAFE:** Or if you don't ask to abstain, hear the discussion, participate in the discussion and then get to the end and then determine that you wanted to abstain. I think it is too late, and you can't just say I abstain, and if you do that then your abstaining will count as an affirmative vote.

**PHILLIPS:** So you are also saying that you need to make that or you need to abstain early and excuse yourself or not participate in the proceedings and hearings. Speak up early.

**DICKGRAFE:** Yes.

**FOSTER:** I don't understand what it has to do with a negative vote. If we had four members here and three people vote for it and one is silent, there are not negative votes.

**KNEBEL:** That's right.

**FOSTER:** So what happens then?

**KNEBEL:** If there are four people here and three say yes and one says nothing, that is 4-0 yes vote.

**FOSTER:** But it says unless there shall be a negative, all right there are five people here, one vote is negative, and one is silent, what does that mean then.

**KNEBEL:** That would be 4-1 then.



**FOSTER:** You are saying that in any case, why do we have to say unless there is a negative vote?

**KNEBEL:** Because if we don't say that and you vote negative, then this sentence would say that your negative vote is an affirmative vote.

**FOSTER:** So you are saying that the words "unless there shall be a negative vote cast" is related to that person who is silent?

**DICKGRAFE:** Yes.

**FOSTER:** See I don't read it that way. Where does it say that's the person. I never had any idea that that is the person voting.

**PHILLIPS:** You have five people here. Instead of everybody in the affirmative you have four people voting the negative, and one person abstains. Then that is different than being the other way around obviously. I think that is why that's in here just specifying it.

**FOSTER:** It doesn't say unless there shall be a negative vote cast by the member's silence. I didn't attach it. I'm sorry, I did not attach it to the person being silent.

**KNEBEL:** You can't cast a negative vote by being silent. All you can cast is an affirmative vote by being silent, and that is what this says.

**MILLER:** The only way you can cast a negative vote is to actually make a negative vote. If you sit there silently, then you're going to be counted as a positive vote.

**FOSTER:** A default mechanism, I guess, just trying to keep it clear.

**RUANE:** But Bickley the negative vote doesn't have to be cast by somebody else.

**FOSTER:** See I don't understand that. If everybody understands that but me, fine. But I can tell you I do not understand it.

**DICKGRAFE:** Or you could add after negative vote "cast by such member", which would clear up Bickley's concern that unless permission has been granted or unless there has been a negative vote cast by such member, a member silence and voting shall be recorded as an affirmative vote.

**RUANE:** Then have it be "(comma) that member's silence." See what I mean.

**FOSTER:** Who is such member? That's the point.

**RUANE:** Unless there shall have been a negative vote cast by...what did you say Sharon?

**DICKGRAFE:** By such members, that member's silence. That's fine.

**RUANE:** That resolves it Bickley. Next question.

**FOSTER:** I have one other. On the next page on Article 8, and I'm doing this because I want to learn about it too. But okay, lets talk about...

**DICKGRAFE:** Article 8?

**FOSTER:** Article 8 (a), we are talking about the jurisdiction on the Board of Zoning Appeals. Under Appeals I assume that gives us the right to have appeals and all of that, and variances give the right to have a variance and the sign code now where does it give the right to appeal a landscape code?

**KNEBEL:** You can't, you don't have the...to appeal a decision of a landscape?

**FOSTER:** That is what is in here now.

**MILLER:** Basically you would be appealing an interpretation of the Zoning Administration.

**DICKGRAFE:** An interpretation.

**FOSTER:** Yeah, That is what I am getting at. Shouldn't we list it under (a) here?

**KNEBEL:** What page are you on?

**FOSTER:** I am on Page 4, Article 3 number (a), and I am just rising, if we can?

**KNEBEL:** It is an appeal. It is number one. It would be an appeal for that section of the City Code.

**FOSTER:** Okay, is that reference, see I don't know, is the Landscape Code in the Zoning regulations, or a separate document?

**KNEBEL:** No it is not.

**FOSTER:** Or a separate document?

**MILLER:** It is a separate ordinance.

**FOSTER:** Then that is why we mentioned the sign code right, as a separate document?

**KNEBEL:** Well we mentioned it as a variance of the sign code. You can't vary anything in the landscape code. But you can appeal.

**FOSTER:** Shouldn't we put the landscape code in (a) somewhere if it is an appealable item?

**KNEBEL:** No.

**FOSTER:** If it is an appealable item.

**KNEBEL:** It is appealable in the way it is written.

**FOSTER:** Is it covered by number one, Scott?

**KNEBEL:** Yes.

**MILLER:** Yes.

**DICKGRAFE:** Yes.

**FOSTER:** So the appealing of the landscape is in the zoning regulations, but the appealing for signs is not in the zoning regulation.

**KNEBEL:** I don't know why are you referring to the zoning regulations?

**FOSTER:** Well it says appeal, section 2.125, so and so.

**KNEBEL:** Right but that is not the zoning regulations.

**FOSTER:** All right, that is the code of the City of Wichita.

**KNEBEL:** Right, but that is not the Zoning Code.

**FOSTER:** Okay. All I am saying is, where is the right for a person to appeal the determination made for the Landscape Code?

**KNEBEL:** Section 2.12.590.

**FOSTER:** Thank you, I couldn't see it.

**RUANE:** Anything else on this item?

**FOSTER:** I think that is it Mr. Chairman. Let me turn the page here and see if I have a note.

**DICKGRAFE:** I have just two comments when Bickley is finished. In Article 6 Section A, the statute that was originally cited was 4319. At some point during the discussions at the last meeting, at which I was not present for, it got changed to 4318. It is my legal opinion that we need to go back to the 4319, which is the expressed provisions in the state

statutes, which was my concern with citing these statutes, is if the statutes change our bylaws would be wrong, but we wanted to cite our statutes that 75-4319 sets forth the procedures to have a closed or executive meeting. Eighteen just really states the purpose that meetings will be open. So I am not sure why it was changed to 18, but it is my recommendation that we go back and cite appropriate statute, which is 75-4319.

**FOSTER:** But doesn't 18 say that the Board of Zoning Appeals is a quasi-judicial body and that it doesn't come under the Open Meeting law?

**DICKGRAFE:** No, it doesn't.

**RUANE:** Sharon would you be more comfortable in citing...

**DICKGRAFE:** Kansas Open Records Act, would be what...

**RUANE:** Or exceptions thereto. I think that is the smarter way to do.

**DICKGRAFE:** Yes, because then if they amend 4319 to then be 4319 (a), 4319 (b)...

**RUANE:** There will always be open meeting requirements and there will always be exceptions to it. And we will never know what the precise statutory cite will be.

**DICKGRAFE:** And I think originally I had this as allowed by the Kansas Open Records or Open Meeting Act and any amendments thereto, which gets you away from this which subsections you are arguing at later, and as long as we comply with the provisions we are fine.

**RUANE:** I am only speaking for myself, but I would prefer it to be the Kansas Open Meeting Act and any exceptions thereto.

**FOSTER:** Mr. Chairman, what I am referring to in 4318 is, no binding action but any administrative body that is authorized by law to exercise quasi-judicial functions, shall not be required to have Open Meeting, when such body is deliberating, waiting to a decision, involving such quasi-judicial functions. That is what we do isn't it. We are an administrative body.

**DICKGRAFE:** Yes, but I think that is the whole purpose. What I mean is what this article is talking about is that all of action will be, shall be public except if we go into a closed session. That particular statute doesn't talk about going into a closed session. That statute talks about essentially what are, or are not, required to have Open Meetings.

**RUANE:** Who falls within the scope of Open Meetings, not who falls within, not what the exceptions to Open Meeting is.

**DICKGRAFE:** Yes, Yes.

**FOSTER:** I don't have 19 here. Do you have 19 here?

**DICKGRAFE:** Yes I do.

**FOSTER:** Well I just think that 4318 is important to establish this group as a quasi-judicial body, and that is what allows it to have closed sessions, and 4319 doesn't say anything about that. It doesn't identify us as being a quasi-judicial body. Maybe it is both things Sharon.

**DICKGRAFE:** And that is why I think that we are saying if you put recess to a closed session as allowed by the Kansas Open Meeting Act, cite your statute, but accept and amendments thereto, you have covered it.

**FOSTER:** Yes, I would agree with that, but that is why I leaned towards the 18 because it identifies it. But the whole thing Mr. Chairman would take care of it.

**RUANE:** Does that sound like an all of the above solution? What's next?

**FOSTER:** I think that is it Mr. Chairman.

**RUANE:** Sharon did you have another point?

**DICKGRAFE:** Yes I had another one. On Article 5, we have talked about giving notices to the property owners of the appeal. That's not something that is currently required by the ordinances that govern this board. Scott has pointed out to me that there are some zoning code provisions that say you can pass rules regarding your notices, and that is probably something that we need to clean up. But that is certainly something that is not required by 2.12.580, and that maybe some ordinance clean up that staff and I need to do after this.

**RUANE:** And this would particularly address the Steven's sign interpretation of Schroeder's?

**DICKGRAFE:** Yes, and certainly there is not a legal problem with the board giving additional notice. It is just that we probably need to be consistent and get our ordinances to conform.

**RUANE:** I think from a fairness standpoint this is a very wise move and if there, until it gets into the statute, we can at least have this part for it.

**DICKGRAFE:** Yeah, I think staff can go ahead and comply with the rules.

**FOSTER:** I think you are going to find more appeals on more difficult cases related to correction facilities in Wichita, and it would be a wise idea thing to give more notice.

**RUANE:** And this would provide that would it not.

**DICKGRAFE:** Yes.

**FOSTER:** And I think that the rules, these are our rules, and we can give, as Sharon says, more notice. I don't have any further comments at this time.

**RUANE:** Okay, have we collectively in our minds, guaranteed, gathered the changes we have seemed to agree to here by consensus and the draft we have in front of us? Sharon do you feel pretty comfortable? Did you pick up the consensus from what we seem to want from here?

**DICKGRAFE:** Yes.

**RUANE:** Well then I think we need a motion to adopt and approve these amendments to our rules and regulations as confirmed by Sharon's notes.

**DICKGRAFE:** With the two changes, which are actually just the addition in Article 2E the clarification and the change in Article 6A, which reference the Kansas Open Meeting Act rather than a specific statute which is a portion of that Act.

**FOSTER:** And to move those regulations.

**DICKGRAFE:** Oh yes and the rules and regulations from the first page.

**PHILLIPS moved SKELTON second, to approve amendments to the Board of Zoning Appeals Rules and Regulations.**

**Motion carries 5-0.**

**RUANE:** We are to # 5. J.R. is not here. Does that mean that we don't have a report from Central Inspection or do we have a standard? No report? Anything else to come before the Board?

**FOSTER:** May I ask, do we have the Landscape Code in the material we received Scott? I was trying to look for it

**KNEBEL:** No it is not in there.

**FOSTER:** We probably ought to have it. We got the Sign Code.

**RUANE:** We got this, I assume because I asked for it.

**KNEBEL:** Well and that is new. That is a recently adopted version.

**FOSTER:** It seems to me, didn't we get one of the Sign Code too. I don't recall. I think we did several months ago.

**KNEBEL:** I think the last time it changed was in June of 1998.

**DICKGRAFE:** I think when Randy Sparkman came and talked to the board he gave out copies, but it's has been a while ago.

**FOSTER:** Why don't we say Mr. Chairman that if we have a case on either the landscape or on the sign again, we probably ought to have a copy at that time. How would that be?

**RUANE:** And in addition, lets have staff really direct us in their recommendations or comments as to which provision of those codes we need to zero in on. Since we are less familiar with them. Since in fact I would really rather do that than have a copy of the code. That is just my preference. Meeting adjourned see you next...

**Meeting adjourned 2:39 p.m.**